

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

NANCY CROWDER, as attorney in fact)
For Billy Vestal,)
)
Plaintiff,)
)
v.)
)
MARSHALL COUNTY, TENNESSEE)
and DONNELL KELLY,)
)
Defendants.)

No. 1:13-CV-00003
JUDGE HAYNES
JURY DEMAND

DEFENDANT DONNELL KELLY'S MOTION FOR PARTIAL DISMISSAL

Comes Defendant Donnell Kelly ("Defendant Kelly"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and moves the Court for entry of an Order dismissing the Plaintiff's claims in Paragraph 18a. of Count I and dismissing Count III in its entirety in the Plaintiff's First Amended Complaint against him with prejudice.

As grounds for this Motion, with the exception of those claims involving allegations of excessive force, Defendant Kelly is entitled to absolute judicial immunity on Plaintiff's claims under 42 U.S.C. § 1983 to the extent that they relate to the setting of Mr. Vestal's bail. Specifically, as a judicial officer performing a judicial act within his jurisdiction as the Judicial Commissioner for Marshall County, Defendant Kelly enjoys absolute judicial immunity for his conduct in setting the amount of Mr. Vestal's bail.

Defendant Kelly is also entitled to absolute immunity on Plaintiff's state law claims for assault and battery pursuant to Tenn. Code Ann. § 20-20-310(b) because

Marshall County's immunity from suit is removed for injuries arising out of assault and battery. As a result, Defendant Kelly is immune as to these claims.

The Court should further decline to exercise jurisdiction over the Plaintiff's claims for assault and battery based on the exclusive jurisdiction of the Marshall County Circuit Court to hear claims arising under the TGTLA. Tenn. Code Ann. § 29-20-307.

In support of this Motion for Partial Dismissal, Defendant Kelly relies upon the simultaneously filed Memorandum of Law.

WHEREFORE, Defendant Donnell Kelly respectfully requests that the Court enter an Order dismissing in part the Plaintiff's First Amended Complaint against him with prejudice.

Respectfully submitted,

DICKINSON WRIGHT PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served by electronic filing or U.S. Mail, to:

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Mr. Mark Nolan
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this 12th day of April, 2013.

/s/ Kelly M. Telfeyan
Kelly M. Telfeyan

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